

COMMUNICATIONS SYSTEM AGREEMENT

CATEGORY 1 – GOVERNMENT ENTITY

This COMMUNICATIONS SYSTEM AGREEMENT (the “Agreement”) is made and entered into by and between Hill County (“HC”) acting herein by and through its duly authorized County Judge, and _____ (“USER”), acting herein by and through its duly authorized Fire Chief individually referred to as a “party,” collectively referred to herein as the “parties.” HC or Hill County shall include all employees, directors, officers, agents, and authorized representatives. USER shall include all employees, directors, officers, agents, and authorized representatives.

RECITALS

WHEREAS, this Agreement is made under the authority of Sections 791, Texas Government Code; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the subject of this Agreement is necessary for the benefit of the public and each has the legal authority to perform and to provide the governmental function or service which is the subject matter of this Agreement; and

WHEREAS, each governing body finds that the performance of this Agreement is in the common interest of both parties and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, Hill County owns, operates, and maintains Trunked Voice Radio Systems for the purpose of providing Public Safety voice radio communications and is the sole license holder of the HC Trunked Voice Radio Systems with all privileges and responsibilities thereof.

NOW THEREFORE, Hill County and USER agree as follows:

1. Grant of License. Hill County hereby grants the USER specific permission to operate USER’s owned or leased field radio equipment or equipment attached and/or interfaced to the HC Trunked Voice Radio Systems (the “Radio System”) infrastructure in accordance with the specific details and requirements for use as set forth in “Exhibit A, Terms of Use,” which is attached hereto, incorporated herein, and made a part of this Agreement for all purposes. Failure to comply with these specific details and requirements may result in the immediate withdrawal of the specified permissions.
2. Term. The Agreement shall become effective upon the signing of the Agreement by the County Judge of Hill County (the “Effective Date”) and shall continue in full force and effect unless terminated in accordance with the provisions set forth herein and in Exhibit A.
3. Compensation. USER shall remit payment to Hill County in the amount and manner set forth in Exhibit A.
4. Liability. Each party agrees to be liable for any damages or loss that may be caused by its own negligence, omission or intentional misconduct. For purposes of this Section 4, the term party shall include employees, directors, officers, agents, authorized representatives, subcontractors, consultants, and volunteers of

the respective party. Nothing in the performance of this Agreement shall impose any liability for claims against either party other than for claims for which the Texas Tort Claims Act may impose liability.

5. Independent Contractor. It is expressly understood and agreed that USER shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the HC. Subject to and in accordance with the conditions and provisions of this Agreement, USER shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER acknowledges that the doctrine of *respondeat superior* shall not apply as between the HC, its employees, directors, officers, agents, and authorized representatives, and USER and its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants. USER further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between HC and USER.

6. Non-Appropriation of Funds. Hill County and USER will use best efforts to appropriate sufficient funds to support obligations under this Agreement. However, in the event that sufficient funds are not appropriated by either party's governing body, and as a result, that party is unable to fulfill its obligations under this Agreement, that party (i) shall promptly notify the other party in writing and (ii) may terminate this Agreement, effective as of the last day for which sufficient funds have been appropriated.

7. Right to Audit. USER agrees that the HC shall, at no additional cost to HC, during and until the expiration of three (3) years after termination of this Agreement, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers, records, and communications of the USER involving transactions relating to this Agreement. USER agrees that HC shall have access during normal working hours to all necessary USER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. HC shall give USER reasonable advance notice of intended audits.

8. Assignment. USER shall not have the right to assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of HC. Which such right shall be granted solely at the discretion of HC. Any assignment in violation of this provision shall be void.

9. No Waiver. The failure of either party to insist upon the performance of any provision or condition of this Agreement or to exercise any right granted herein shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

10. Governmental Powers/Immunities. It is understood and agreed that by execution of this Agreement, the neither HC nor USER waives or surrender any of its governmental powers or immunities.

11. Amendments. No amendment to this Agreement shall be binding upon either party hereto unless such amendment is set forth in writing, dated subsequent to the date of this Agreement, and signed by both parties.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Confidential Information. To the extent permitted by law, USER for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by the HC as confidential ("County Information") and shall not disclose any such information to a third party without the prior written approval of HC, unless such disclosure is required by law, rule, regulation, court order, in which event USER shall notify

HC in writing of such requirement in sufficient time to allow HC to seek injunctive or other relief to prevent such disclosure. USER shall store and maintain County Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt County Information in any way. USER shall notify HC immediately if the security or integrity of any County Information has been compromised or is believed to have been compromised.

14. Force Majeure. The parties shall exercise their best efforts to meet their respective duties and obligations hereunder, but shall not be held liable for any delay in or omission of performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any state or federal law or regulation, acts of God, acts of omission, fires, strikes, lockouts, national disasters, wars, riots, material or labor restrictions, transportation problems, existing contractual obligations directly related to the subject matter of this Agreement, or declaration of a state of disaster or emergency by the federal, state, county, or City government in accordance with applicable law.

15. Notices. Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

Hill County Emergency Management
Attn: Radio Administrator
218 N Waco
Hillsboro, Texas 76645

Attn: _____

16. Governing Law / Venue. This Agreement shall be construed in accordance with the laws of the State of Texas. Venue for any action brought on the basis of this Agreement shall lie exclusively in state courts located in Hill County, Texas or the United States District Court for the 66rg District of Texas. In any such action, each party shall pay its own attorneys' fees, court costs and other expenses incurred as a result of the action.

17. Signature Authority. The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

18. Entirety of Agreement. This written instrument, including all Exhibits attached hereto, contains the entire understanding and agreement between Hill County and USER as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with this Agreement. Any previously executed Communication System Agreement between the parties shall be terminated simultaneously with the final execution of this Agreement by both parties.

19. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

[Signature Page Follows]

Agreed and Accepted:

Hill County

Title: County Judge

Name: Shane Brassell

Signature: _____

Title: _____

Name: _____

Signature: _____

EXHIBIT A

CATEGORY 1, TERMS OF USE

The following definitions shall have the meanings set forth below and apply to this Agreement and the Terms of Use set forth herein:

DEFINITIONS

“HC” shall designate the local government of Hill County.

“Console System” shall mean all hardware and software associated with any dispatch console or set of consoles operated by the USER that are connected to the HC Radio Master Switch.

“Infrastructure Support Fee” shall mean the annual fee charged by HC to offset costs incurred by HC in the operation and maintenance of the Radio System.

“Master Switch” shall mean the primary processing and network infrastructure to which all Console Systems and Site Repeater Systems must connect in order to operate on the Radio System.

“Private Call” shall mean a feature that reserves channel resources specifically for conversations between two Subscriber Radios.

“Site Repeater System” shall mean the base stations, shelter, tower and all site-specific hardware and software infrastructure associated with the provision of a radio site connected to the HC Master Switch.

“Subscriber Radio” shall mean a radio that has a unique identification number and is programmed to operate on the Radio System. The term shall include, but not be limited to, control stations (desk top radios), mobile radios, and portable radios.

“Talk Group” shall mean a specific group of Subscriber Radios allowed to communicate privately within that group over shared infrastructure resources.

TERMS OF USE

1. The installation and maintenance of the Radio System infrastructure equipment is the responsibility of USER unless otherwise stated in this Agreement.

2. HC is the holder of the FCC (Federal Communications Commission) license(s) that the Radio System uses for its operation. This Agreement shall not be construed or interpreted to grant, convey, or otherwise provide USER with any rights whatsoever to the HC FCC license(s) or to the Radio Frequency spectrum used by the Radio System.

3. HC makes no guarantee, either express or implied, as to radio signal strength or a specific level of radio coverage in a particular location. The USER is responsible for conducting appropriate and applicable in-building and geographical coverage testing to determine the expected radio coverage level for USER’s equipment.

4. USER will be responsible for the acquisition, and maintenance of all equipment USER will be utilizing in connection with the Radio System infrastructure, including, but not limited to, Subscriber Radios, consoles, and special equipment. Whereas HC will conduct all subscriber radio programming.

5. In order to ensure hardware and software compatibility with the Radio System infrastructure, all Subscriber Radios and consoles intended for use by USER on the Radio System shall be compliant with Project 25 standards established by the Telecommunications Industry Association. The use of unauthorized radios on the Radio System may result in suspended operation of the radios and/or termination of the Agreement. If the USER opts to get a manufacture other than Harris or Motorola, the USER must supply necessary programing tools at their expense.

6. USER agrees to exclusively utilize antennas specifically approved by the radio manufacturer for use with the specific models of USER's radios. The use of short, broad spectrum, or "stubby," antennas is not recommended. USER shall be solely liable for coverage gaps in the event USER utilizes short broad spectrum or stubby antennas or other antennas not approved by the manufacturer for use with the specific models of USER's radios.

7. No antenna gain greater than 3 DB will be allowed for mobiles and consolettes.

8. USER shall use due diligence in the maintenance and configuration of its Subscriber Radio equipment to ensure that no USER radio or console causes a degradation to the Radio System operation. HC shall have the right to remove from operation any field radio unit or equipment owned or leased by USER that is operating on, attached and/or interfaced to HC infrastructure, if HC determines in its sole reasonable discretion that such equipment is causing interference or harm to the Radio System in any way. HC reserves the right to request that USER operated field radio units or equipment operating on, attached and/or interfaced to the infrastructure be tested for proper operation and/or repaired by an authorized radio repair facility approved by HC. The cost of such testing or repair will be the sole responsibility of USER. Furthermore, HC shall have the right to deactivate, without prior notification to or consent of USER, any field radio or other USER equipment suspected of causing interference, intentionally or unintentionally, to any other radios on the Radio System or to the Radio System's overall operation.

9. USER's radios may be used for voice radio communications over the Radio System infrastructure in accordance with the terms and conditions of this Agreement for as long as this Agreement remains in effect.

10. HC will be responsible for managing infrastructure loading and demand. HC reserves the right, without notice to incumbent users, to enter into a similar agreement with other entities or to deny the addition of new Subscriber Radio equipment to any user of the Radio System. HC shall have sole discretion in determining whether to allow additional users or radios based on HC's determination of whether such addition to the Radio System can be made without adversely impacting the Radio System.

11. USER is prohibited from utilizing telephone interconnect on the Radio System. This prohibition shall include, but is not limited to, connecting to either the PSTN (Public Switched Telephone Network) or USER's internal phone system(s) through a console patch into the Radio System or to any Subscriber Radio on the Radio System.

12. Due to the radio infrastructure resource allocations required by "Private Call," USER is not permitted to utilize "Private Call" on the Radio System.

13. USER's utilization of data communications on the Radio System will be limited to the Radio System's OTAP functions. Performance of data communications over the Radio System is not guaranteed. For programming changes involving more than ten Subscriber Radios, USER agrees to coordinate with HC prior to executing changes to minimize impact on other users and on the Radio System.

14. The use of OTAR in association with Subscriber Radio encryption is prohibited without prior approval of HC. Administration of encryption keys will be performed exclusively by HC. USER may utilize and administer other encryption methods as required.

15. HC will assign the USER Talk Group IDs unique to USER operation. All Talk Group names shall include a prefix unique to the USER's agency. No other agency will be authorized to use USER Talk Groups without the express written permission of USER, and a copy of such permission must be on file with HC before such use may occur. HC reserves the right to require certain Talk Group ID's to be programmed in USER radios. Additionally, HC shall have the right to limit the number of Talk Group ID's to be used by USER and to disable Talk Groups ID's as it deems appropriate.

16. HC has established a coordinated Interoperable Communications Plan to apply to HC and the users of its Radio System. USER agrees to participate in the Plan and include the Plan's interoperable Talk Groups in the programming of its Subscriber Radios and Console Systems.

17. Roaming to other systems or the use of USER's Talk Groups on other trunked systems that are interconnected to the Radio System is prohibited without prior approval by HC. Roaming to other trunked systems will be limited to the Radio System's interoperable Talk Groups, although this capability may be terminated by HC if its use is determined to result in performance degradation to either the Radio System or the interconnected trunked system.

18. HC generally maintains aliases for units operating on the Radio System. If the USER has acquired the capability to modify its aliases, it may administer and maintain its own subscriber unit aliases. From that point, USER will be responsible for administering and maintaining its own subscriber unit aliases, and HC will no longer administer and maintain the USER's subscriber unit aliases.

19. USB ports on the USER's Console Systems must be deactivated except during maintenance activity. All security patches related to operating systems and other associated software must be maintained at current manufacturer-tested levels. If required, all connectivity between the Console Systems and the Radio System is the responsibility of the USER, including software, hardware and carrier services. Associated costs will be incurred by the USER. Unless otherwise approved by HC, connectivity will be achieved through local terrestrial circuit facilities. The use of other connectivity methods, including but not limited to microwave or fiber, must be approved by the HC. USER may incur additional costs from HC for other connectivity methods.

APPLICABLE FEES; TERMINATION; REFUNDS

20. USER shall pay the HC an annual Infrastructure Support Fee in the amount of **\$15.00** per month, per Subscriber Radio or console. This fee is billed in advance on an annual basis for all active radio IDs issued to USER at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each HC fiscal year. There will be no refunds or credits for radios removed from service during the fiscal year.

21. USER shall pay the HC an annual Infrastructure Support Fee in the amount of **\$7.00** per month, per Subscriber LTE/WIFI device used. This fee is billed in advance on an annual basis for all active radio IDs

issued to USER at the time of the annual billing. Invoicing will occur on a pro-rata basis when new Radio IDs are issued, and thereafter, at the beginning of each HC fiscal year. There will be no refunds or credits for radios removed from service during the fiscal year.

22. HC shall have the right to increase any applicable fees under this Agreement each fiscal year to offset any increased costs incurred by HC in the operation or maintenance of the Radio System. Any increase in applicable fees will be effective at the beginning of the next HC fiscal year. HC shall provide USER with 60 days' written notice of any intended fee increase, provided, however, that this notice period may be less than 60 days if Daily Wells/Harris provides HC with less than 60 days' notice of an increase in the System Upgrade Agreement Fee and such reduced notice period shall not impact USER's obligation to pay the increased fee.

23. Either USER or HC may terminate this Agreement for any reason, with or without cause, upon ninety (90) days written notice to the other party. If USER terminates, there will be no refunds or credits for any fee. If HC terminates, HC will issue a refund to the USER of all fees unused months that were paid for. HC, in its sole discretion, shall have the right to deny USER access to the radio infrastructure and/or the right to terminate the Agreement immediately if USER fails to make full payment of invoiced system fees within thirty (30) days of the date payment is due. HC further reserves the right to terminate this Agreement immediately, or deny access to the USER, upon notice of USER misuse of the Radio System. Notwithstanding the foregoing, HC, in its sole discretion, reserves the right to immediately deny access to the USER if such action is required to prevent the spread of a security breach or threatened security breach or due to an emergency, operational issue, or other critical incident between the Master Switch and the USER's environment. HC will use best efforts to restore access to the USER as soon as possible once the security breach, emergency, operational issue, or critical incident is resolved.

COMPLIANCE WITH LAWS

24. The USER shall comply with all current and future Federal, State, and Local laws, Ordinances, and Mandates, including Federal Communications Commission rules and regulations regarding proper use of radio communications equipment. The USER will also comply with the guidelines, or procedures set out in this Agreement. Furthermore, the USER is responsible for enforcing such compliance by its employees, directors, officers, agents, authorized representatives, subcontractors, and consultants for USER Subscriber Radio equipment. Furthermore, the USER will be responsible for payment of any fines and penalties levied against HC (as the license holder) as a result of improper or unlawful use of Subscriber Radio equipment owned or leased by USER.

25. In order to comply with Federal, State, and Local Laws and/ or Mandates, HC, as the license holder, may need to act on behalf of the USER regarding possible modifications, reconfiguration, or exchange of Subscriber Radio equipment in order to meet these obligations. For as long as this Agreement is in force, the USER will allow HC to facilitate such activities on USER's behalf as necessary.

26. In the instance where USER Subscriber Radio equipment is to be replaced in order to be in compliance with Federal, State, and Local Laws and/or Mandates, title and ownership of such replacement Subscriber Radio equipment shall, upon delivery of Subscriber Radio equipment to the USER's site, pass directly to the owner of the equipment that is being replaced. The USER shall provide HC, or its designee, with the Subscriber Radio equipment to be replaced, in good working order, as determined by HC or its designee. USER shall be liable for payment of any fees associated with radios deemed to be not in proper working order. USER shall be liable for payment of any fees associated with upgrades to Subscriber Radio equipment.

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